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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,206	10/09/2001	John M. Harris	CE08991R	5804
22917	7590	09/29/2008		
MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196				
EXAMINER				
WONG, WARNER				
ART UNIT		PAPER NUMBER		
2616				
NOTIFICATION DATE		DELIVERY MODE		
09/29/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing.US@motorola.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/973,206

Applicant(s)

HARRIS, JOHN M.

Examiner

WARNER WONG

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Kwang B. Yao/
Supervisory Patent Examiner, Art Unit 2616

Warner Wong
Examiner
Art Unit: 2616

Continuation of 11, does NOT place the application in condition for allowance because: On p. 3 para. 3, the applicant argues in detail that the previous Examiner response does not "teach a controlling, by the BS, of anything other than resources at the BS. Nowhere does Kokko teach a BS with knowledge of resources internal to an MS or a controlling of resources that are solely within the province of an MS". The examiner respectfully disagrees.

The examiner asserts the rejection of claim 1 is proper because it is broad enough in which it does NOT specify which element is performing each of the specified steps. In the last Office Action, the examiner attempted to explain that it was the mobile/receiver that determines its jitter buffer depth: the Kokko reference describes that each mobile 12 determines whether it has more than some number of packets in its buffer 12A/B/C (fig. 1 & col. 9, lines 1-2). The examiner has brought is AAPA to further explicitly describe that a cellular radio receiver (mobile)'s buffer being a jitter buffer.

The above argument from the applicant is regarded as "reading the limitations of the specification into the claim" which is held invalid per MPEP 2111:

"The court explained the 'reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is quite different thing from reading limitations of the specification into a claim .. i.e. the impermissible importation of subject matter from the specification into the claim. See also *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed.Cir. 1997) (The court held that the PTO is not required, in the course of prosecution, to interpret claims in applications in the same manner as a court would interpret claims in an infringement suit. Rather, the 'PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.')

In summary, the brief claim 1 can be reasonably interpreted per the rejection THAT THE MOBILE ITSELF DETERMINES THE JITTER BUFFER DEPTH TARGET, unless additional claim language is amended to narrow the scope of interpretation.

On p. 4 para. 2-3, the applicant argues that Simonsson fails to teach "determining to transmit frames at a higher power level when a determined RF load metric is lower than an RF load threshold". The examiner respectfully disagrees.

The applicant conceded that Simonsson teaches "increasing a transmit power in a high interference environment to improve reception and achieve a target data rate." The examiner understands that this is EQUIVALENT TO limitations of claim 6: Simonsson, col. 7, lines 46-56 & col. 8, lines 37-50 & fig. 6 describes that transmit power is INCREASED when the quality measurements such as C/I (Carrier-over-Interference) is LOWER than its quality window, i.e. high interference.

Hence, the examiner understands that the above argued rejections are proper.